United Nations S/2006/890

Security Council

Distr.: General
15 November 2006

Original: English

Letter dated 15 November 2006 from the Permanent Representative of Ethiopia to the United Nations addressed to the President of the Security Council

I have the honour to transmit herewith a copy of the letter addressed to Professor Sir Elihu Lauterpacht, President of the Eritrea-Ethiopia Boundary Commission, from Mr. Seyoum Mesfin, Minister of Foreign Affairs of the Federal Democratic Republic of Ethiopia, regarding the situation between Eritrea and Ethiopia (see annex).

I would be grateful if the present letter and its annex could be circulated as a document of the Security Council.

(*Signed*) Dawit **Yohannes**
Ambassador
Permanent Representative

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Annex to the letter dated 15 November 2006 from the Permanent Representative of Ethiopia addressed to the President of the Security Council

It was with considerable dismay that I received word of Mr. Ratliff's letter Wednesday morning, 8 November notifying our legal counsel that the Commission intends to issue a demarcation decision on 20 November. Subsequently, I have received a copy of your letter to the President of the United Nations Security Council.

Demarcation

Since the Commission's Delimitation Decision of April 2002, the Commission and the Parties have established a careful process, involving field work and cooperation, for demarcation of the boundary. While Ethiopia has expressed concern that this process does not conform to international practice and does not allow sufficient consideration of anomalies and impracticalities as between the lines set out in the April 2002 Delimitation Decision and the realities on the ground, Ethiopia has taken some comfort in the recognition by the Commission that anomalies and impracticalities exist and that such a practical and cooperative process would be required in order for the Commission to complete the responsibilities assigned to it by the Parties in the December 2000 Agreement.

Eritrea's movement of troops into the Temporary Security Zone, the severe restrictions it has placed on UNMEE's freedom of movement and its refusal to comply with Security Council Resolution 1640 and expulsion of UNMEE personnel is a serious breach of the Algiers Agreements and has stalled the demarcation process provided for by the Commission's decisions and instructions. Meanwhile, Eritrea has continued to assert that it has the right to seize territory allocated to it by the Delimitation Decision through force of arms and has challenged the Commission's processes as being influenced by political pressures.

You have quite rightly rejected these Eritrean allegations in your communications with Eritrea and have called upon Eritrea to withdraw its military forces from the border regions to allow demarcation to proceed. The UN Security Council has repeatedly made the same demand of Eritrea. Eritrea has refused to heed either the Commission's requests or the Security Council's demand. Under the circumstances, I cannot imagine that appeasement of Eritrea is the appropriate step.

Against this recent history, it is impossible to understand or accept the Commission's plan to issue a demarcation decision, notwithstanding the clear understanding by the Parties and Witnesses to the Algiers Agreements that final demarcation would be impossible without a cooperative process with the view to understanding and dealing with anomalies and impracticabilities. All of the Commission's work on demarcation prior to Mr. Ratliff's November letter demonstrates the Commission's understanding that a cooperative process of fieldwork and practical decision-making is required by the Commission's mandate in order to effect a legal valid demarcation. That mandate, the most fundamental terms of which are set out in paragraphs 2, 13 and 14 of Article 4, is clear and succinct. The mandate requires: neutrality, a delimitation decision to be conveyed to the AU and UN for publication; and subsequently, demarcation. A requirement that the Parties must facilitate demarcation by allowing access to the territory each control is a clear indication that the demarcation process requires fieldwork. Indeed, the very purpose of demarcation, compared to delimitation, is to take account of the facts on the ground so that the theoretical delimitation line does not result in anomalies and impracticabilities.

The Commission's very practical process of demarcation of the Eastern sector of the boundary illustrates a process of the sort envisioned by the mandate and familiar to international practice. The Eastern sector demarcation involved representatives of both Parties working on the ground with Commission's technical staff and making adjustments necessary to apply the delimitation decision to the practical realities on the ground. Both Parties were actively involved and both indicated their approval of the final pillar locations adopted.

The letter from Mr. Ratliff did not provide a clear indication of the nature of the proposed "demarcation decision" to be promulgated on 20 November. Obviously, Ethiopia will not be in a position to offer comments on so important a matter at the proposed meeting given that the "demarcation decision" has not been disclosed. Clearly the proposed meeting is nothing more than a formality and the issuance at that meeting of a demarcation decision would be completely inconsistent with the responsibilities and mandate of the Commission. It cannot substitute for a process such as that heretofore employed by the Commission and required by the Algiers Agreements and international law.

What is most disturbing is also how the letter gives short shrift to the earnest attempt, which was supported by the Security Council, made by the Witnesses to the Algiers Agreement when at their meeting in February 2006 in New York they proposed certain approaches for removing the obstacles to demarcation. What they underlined was the need for dialogue and support by neutral bodies to help the two parties make progress in demarcation and normalizing their relations.

Why has the Commission abruptly and without notice chosen to abandon the process for demarcation embodied in its rules, instructions and decisions? The reason is apparent. Eritrea has moved its armed forces into the TSZ, rejected the Commission's appointment of an expert to assist with demarcation and refused even to attend the Commission's meetings. Each of these actions by Eritrea is a violation of its obligations under the Algiers Agreements (Article 1 and Article 4, paragraphs 7 and 14 among others); and these violations have prevented continuation of the sort of demarcation process provided for in the Commission's rules and mandate. These violations by Eritrea, however, cannot justify a departure by the Commission from its mandate. A legally valid demarcation cannot be accomplished in the manner described in Mr. Ratliff's letter, and Ethiopia would treat any such demarcation decision as invalid.

International Peace and Security

Mr. President, I must also refer to your letter to the President of the Security Council of 9 November 2006. I would note that the Commission did not extend Ethiopia the courtesy of providing to us a copy of this letter. More importantly, the mandate of the Commission does not include any authority whatsoever for engagement of the commission with the Security Council. The Commission has mentioned Article 6 paragraph 16 in its letter to the Security Council. But this provision of the Algiers Agreements provides that " ... the Parties request the United Nations to facilitate resolution of problems ...", etc. Thus it is a matter between the Parties and the United Nations if the facilitation mentioned in paragraph 16 is to be invoked.

Moreover, the content of the letter suggests that some action by the Commission at its proposed meeting of 20 November could complete the demarcation provided for in Article 4 of the December 2000 Agreement and, therefore, fulfill a precondition for transfer of territorial control. As I have said, any decision purporting to effect a final demarcation under the circumstances suggested in your 7 November letter to the Parties would be invalid and Ethiopia would treat it accordingly; therefore, there is no question of a transfer of territorial control.

You may be aware that the President of the Security Council on 17 October 2006 notified members of the Security Council and the international community that Eritrea had moved 1,500 troops and 15 tanks into the Temporary Security Zone. The Security Council statement included the following points:

> Members of the Security Council are deeply concerned over reports that the Eritrean Defence Forces (EDF) have moved approximately 1,500 troops and 15 tanks into the Temporary Security Zone.
>
> Members of the Security Council express concern that such actions are contrary to the Agreement on Cessation of Hostilities of 18 June 2000 and violate the integrity of the Temporary Security Zone.
>
> Members of the Security Council call on Eritrea to immediately withdraw its troops from the Temporary Security Zone, to extend its full and unconditional cooperation to the United Nations Mission in Ethiopia and Eritrea (UNMEE), particularly to maintain ceasefire arrangements in place, and to immediately lift the restrictions imposed on UNMEE.
>
> Members of the Security Council call on both parties to show maximum restraint and to refrain from any threat or use of force against each other, to avoid any action which may lead to an escalation of the tension between the two countries and to adhere to previous commitments they have made.

Ethiopia is particularly concerned that the Commission would inject itself into so tense and dangerous a situation by its communication to the Security Council referring to "transfer of territorial control" at a time when Eritrea is building up its military forces illegally and in defiance of the Security Council. Under the circumstances theCommission's action is not only ultra-vires but could contribute to a result that Ethiopia and members of the Security Council have been seeking to prevent.

Mr. President, I wish to emphasize that the Commission was established by the Parties to the December 2000 Agreement and must conduct itself according to the mandate it has been granted. Neither the meeting proposed for 20 November nor issuing the proposed demarcation decision conform to the processes envisioned in that mandate or, indeed, to the process for demarcation established by the Commission's own decisions, orders and instructions. In addition, the Commission's communication with the Security Council is *ultra-vires* and extremely ill-advised. Ethiopia urges the Commission to withdraw both of its recent communications and to cancel the meeting proposed for 20 November. Certainly, Ethiopia does not intend to treat such actions as the Commission has proposed as legally valid or as having any legal force and effect. Obviously, if the Commission wishes to proceed along this path which, in Ethiopia's view, is legally invalid and politically dangerous, we would have no choice but to conclude that by its own action the Commission has lost its mandate under the Algiers Agreement.

(*Signed*) Seyoum Mesfin